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CASE NO.: 84-244

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1984

STATE OF FLORIDA,

Petitioner,

vs.

JEFFREY NEASE a/k/a MICHAEL COLWELL
a/k/a LOUIS POYNTER,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT.

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BEST AVAILABLE COPY

QUESTION PRESENTED

WHETHER THE FOURTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA CORRECTLY CONSTRUED THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND FLORIDA V. ROYER, ___U.S. ___, ___, S. Ct. ___, 75 L.Ed. 2d 229 (1983) BY HOLDING THAT THE CIRCUMSTANCES IN THIS CASE WERE NOT SUFFICIENT TO JUSTIFY THE INITIAL STOP?

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OPINIONS BELOW

The Respondent hereby adopts and accepts the OPINIONS BELOW from the State's Petition for Writ of Certiorari.

JURISDICTION

The Petitioner seeks jurisdiction pursuant to 28 U.S.C. §1257(3).

FEDERAL CONSTITUTIONAL PROVISION INVOKED AND STATEMENT OF THE CASE

The Defendant would accept the Petitioner's version of the above, as set forth in their Brief.

THE REASON FOR NOT GRANTING THE WRIT ARGUMENT

The Court has reviewed a factual scenario remarkably similar to this case in the case of Reid v. Georgia, 448 U.S. 438 (1980). While it may be that the lower court could have cited more appropriate cases in support of the

ruling it made, it is clear that precedent in Florida supports the appellate decision. See, Martinez v. State, 414 So.2d 301 (4th D.C.A.) 1982.

The Petitioner's position fails to look to the guidance of when an arrest may implicate the Fourth Amendment of the United States Constitution as set forth in United States v. Mendenhall, 448 U.S. 908 (1980):

> A seizure has occurred if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.

In United States v. Berry, 670 F.2d 583 (5th Cir. 1982), the Court stated as follows:

> We do not wish to shackle police absolutely to a rigid and awkward rule requiring them to inform individuals that they are free to not accompany police police to an office, but we do believe that

> only exceptionally clear evidence of consent should overcome a presumption that a person requested to accompany an agent to an office no longer would feel free to leave. Such a request combines a substantial intrusion on an individual's freedom, a marked increase in the coercive nature of the environment in which the individual will be responding to police, and substantial psychological coercion from the intimation that there is strong suspicion that an individual is involved in criminal conduct ... Even verbal agreement to accompany an officer should be scrutinized exceptionally closely to ensure a complete absence of coercive influence.
>
> 670 F.2d 598

The reasoning of the Berry Court, supra, was embellished in United States v. Elsoffer, 671 F.2d 1294 (11th Cir. 1982):

> We note that a holding [of a seizure prior to the request to go to the lounge] would not differ ... even if the record was clear in showing that the agents had returned Elshoffer's documents before asking him whether he would consent to a search or go to a lounge. We

> do not believe that after a return of the documents retained during interrogation, followed by requests to consent to a search and go to an office, an individual would feel that his detention had ended.
>
> 671 F.2d at 1298, N. 7

Also, in accord, see United States v. Waksal, 709 F.2d 653 (11th Cir. 1983) and United States v. Ilayi, 730 F.2d 1120 (8th Cir. 1984).

Clearly, the Defendant was arrested for purposes of the Fourth Amendment when the officers reidentified themselves and asked for consent to search the Defendant, and for him to accompany them to a remote room; not at a later time when he was running away.

The case of United States v. Harley, 682 F.2d 398 (2nd Cir. 1982) holds nothing to the contrary:

> [D]eliberate furtive actions and flight at the approach of strangers or law officers are strong indicia of mens rea,

> and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest.
>
> 682 F.2d at 401

The decision of the State Appellate Court was entirely proper, and will not stand in contravention of any decisions of this Court. To hold otherwise would require this Court to reverse the posture taken in Reid v. Georgia, supra and serve to add uncertainty to an area of the law where the Court has struggled to delineate guidelines concerning when the Fourth Amendment is implicated.

CONCLUSION

The petition for Writ of Certiorari should be denied.

I HEREBY CERTIFY that a copy of the foregoing was furnished to MARLYN ALTMAN, ESQUIRE, 111 Georgia Avenue,

Suite 204, West Palm Beach, Florida 33401, this 20th day of September, 1984.

Respectfully submitted,

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